39

SUPREME COURT OF THE UNITED STATES

WILLIAM W. BRAUER ET AL.,
Libellants,

against

COMPANIA DE NAVIGACION LA FLECHA,
Respondent.

MOTION FOR ALLOWANCE OF INTEREST ON THE DECREE OF THE DISTRICT COURT.

W. W. MacFARLAND,
Proctor for Libellants.

United States Supreme Court.

WILLIAM W. BRAUER *et al.*

AGAINST

COMPANIA DE NAVIGACION LA FLECHA.

SIRS:

Please take notice that the annexed petition will be submitted to the Supreme Court of the United States on Monday, December 13, 1897, at the opening of Court on that day.

Dated N. Y., December 8, 1897.

Yours, &c.,

WILLIAM W. MACFARLAND,
Proctor for Libellants.

To Messrs. BUTLER, STILLMAN & HUBBARD,
Proctors for Respondent,
54 Wall Street,
N. Y. City.

Due service of the foregoing notice and of the petition therein referred to is hereby admitted.

WILHELMUS MYNDERSE,
Proctor for Compania de Navigacion La Flecha.

4 UNITED STATES SUPREME COURT.

WILLIAM W. BRAUER *et al.*

AGAINST

COMPANIA DE NAVIGACION LA FLECHA.

TO THE SUPREME COURT OF THE UNITED STATES:

5 The petition of the above named libellants respectfully shows as follows:

This action was brought in the United States District Court for the Southern District of New York, sitting in Admiralty, to recover for 126 head of cattle thrown overboard from the steamship *Hugo*. The District Court found that 63 of the cattle had been unnecessarily thrown overboard, and awarded to the libellants $6,839.54 for the loss of said cattle, together with costs, a decree being entered for $7,104.32, on May 7, 1894. Both parties appealed to the United States Circuit Court of Appeals, where the decree of the District Court was affirmed, on March 18, 1895. Thereupon the respondent applied to this Court for a writ of *certiorari* to remove the cause to this Court,
6 which application was granted, and the libellants were thereby stayed from collecting the amount awarded them for the loss of the cattle.

Your petitioner further shows that on or about October 27, 1897, this Court rendered a decision affirming the decree of the United States Circuit Court of Appeals, with costs. Nothing is said in the opinion in regard to interest on the decree of the Court below, and the mandate which has been issued does not award interest, and your petitioners are advised that although by the action of the respondents in suing out said writ of *certiorari* your petitioners have been prevented and delayed in collecting the amount awarded them, nevertheless no interest can

be recovered thereon unless the decree of this Court and 7
the mandate issued thereon be amended by specifically awarding interest. The amount of such interest, calculated from the date of the decree in the District Court, exceeds $1,500. The mandate of this Court has not yet been filed in the District Court, but is returned herewith.

Your petitioners show that it is a great hardship that they should be deprived of all interest on the amount awarded to them, and in this connection your petitioners beg leave to refer to the bond given by the respondents at the commencement of this action, whereby they stipulated to pay any judgment that might be recovered in said action, "in said Court or in any appellate court, together with all costs and interest."

Your petitioners are advised that it was in the contem- 8
plation of the parties in giving said bond that interest would follow upon any decree that might be recovered in the action.

Wherefore, your petitioners pray that the decree herein may be amended by the allowance of interest to your petitioner, and that a mandate may be issued accordingly.

WILLIAM W. MACFARLAND.
Advocate.

UNITED STATES SUPREME COURT.

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WILLIAM W. BRAUER *et al.*

AGAINST

COMPANIA DE NAVIGACION LA FLECHA.

Memorandum in support of the motion for an allowance of interest upon the decree of the District Court.

The respondents by the terms of the bond which they gave at the commencement of this action, stipulated to

10 pay any judgment that might be recovered in said action in "said District Court or in *any appellate court*." In view of this stipulation it was thought not to be necessary to ask the Circuit Court of Appeals to include a provision for interest in its decree of affirmance, for it was assumed that interest would follow as matter of course.

No reference was made to the subject in this Court for the same reason, but perhaps it was an oversight not to call the attention of the Court to the question of interest.

The whole case being here, it is for this Court to say what in this respect justice requires.

It can only be respectfully submitted:

1. That it would appear to be just that the decree should give effect to the express stipulation for the pay-
11 ment of interest, and—

2. That as by the decree of the District Court now affirmed, a specific sum was found due to the libellant which was not paid, but withheld pending the appeals, and presumably employed productively, it would seem to be only right and just that interest should be allowed for its detention.

It is true that both parties appeal to the Circuit Court of Appeals from the decree of the District Court. The respondent because it denied all liability; the libellants because they thought the amount allowed was too small, but this fact of the two appeals would not appear to have
12 any bearing upon the right of the libellants to interest upon the sum originally decreed to be due to them.

W. W. MacFarland,
Advocate for Libellants.

Supreme Court of the United States.

WILLIAM W. BRAUER and others,
Libellants,

AGAINST

COMPANIA DE NAVIGACION LA FLECHA.

No. 39.

Brief in opposition to Motion to amend Mandate in respect of Interest.

This action was originally instituted by the libellants in the District Court of the United States for the Southern District of New York, March 25, 1892, to recover the value of 126 cattle lost on a voyage between New York and Liverpool (*Record, p. 4*).

The District Court gave the libellants a decree May 7, 1894, for the value of 63 of such cattle, with interest thereon to the date of the decree, and with costs, the entire decree being $7,104.32 (*Record, pp. 183, 184*).

Both parties appealed from such decree to the United States Circuit Court of Appeals (*Record, pp. 184, 185*).

The Circuit Court of Appeals affirmed the decree of the District Court, and entered an order March 18, 1895, as follows :

" Ordered, that the decree so appealed from be, and the " same hereby is, affirmed without costs in this court to either " party ; and ordered, that a mandate issue accordingly forth- " with," etc., etc. (*Record, pp. 196, 197*).

The rules of the United States Circuit Court of Appeals provide in respect of interest upon affirmance of decrees of lower Courts :

" In cases in admiralty, damages and interest may be allowed " if specially directed by the Court " (*Rule 30, Subdiv. 4*).

In entering the order of affirmance no allowance of interest was directed by the Circuit Court of Appeals, and, therefore, none would run.

The omission to direct the allowance of interest was in accord with the usual practice of the Circuit Court of Appeals in cases where both parties are appellants. They say, in one case, specifically:

> " The decree of the District Court is affirmed, but, *as both sides appealed*, without interest or costs."
>
> *British & Foreign vs. Southern Pac., 72 Fed. Rep. 285, 288.*

The discretion of the Circuit Court of Appeals under their Rule 30, Subdivision 4, was exercised, and properly exercised, in disallowing interest pending the hearing in that Court of the appeals taken by both parties.

The Supreme Court has a rule identical in terms with that of the United States Circuit Court of Appeals.

> *Rule 23, Subdiv. 4, as amended March 10, 1890, 133 U. S., 711, Appendix.*

Under that rule interest is ordinarily purely within the discretion of the Court to allow or disallow interest.

In the case under consideration, however, this Court has affirmed an order of the Circuit Court of Appeals, which order did not allow interest. It seems probable, therefore, that this Court has not felt that, under the peculiar circumstances of the case, the usual discretion rested with it.

If it has discretion in respect of interest, it has apparently been exercised in favor of disallowing interest—a result which is fairly justified by the hard situation of the shipowner.

In no event should the allowance of interest extend further back than March 18, 1895, the date of the order of the Circuit Court of Appeals.

WILHELMUS MYNDERSE,
Proctor for Compania de Navigacion.